

#25  
JPL  
PATENT 11/23/99

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

*In re* Application of:  
**GARY L. CLAYMAN**

Serial No.: 08/758,033

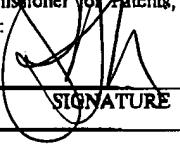
Filed: November 27, 1996

For: **METHOD AND COMPOSITION FOR  
THE DIAGNOSIS AND TREATMENT OF  
CANCER**

Group Art Unit: 1632

Examiner: **K. Hauda**

Atty. Dkt. No.: INRP:041/HYL

<b>CERTIFICATE OF MAILING</b> 37 C.F.R. 1.8	
I hereby certify that this correspondence is being deposited with the U.S. Postal Service as First Class Mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231, on the date below:	
<b>11/9/99</b>	<b>SIGNATURE</b>
<b>DATE</b>	

**DECLARATION UNDER 37 C.F.R. §1.131 OF DR. GARY CLAYMAN**

**BOX AF**  
 Assistant Commissioner for Patents  
 Washington, D.C. 20231

I, Gary Clayman, declare that:

1. I am a U.S. citizen residing at 6353 Westchester St., Houston, Texas. I am Associate Professor of Surgery and Deputy Chairman of the Department of Head and Neck Surgery at the University of Texas M.D. Anderson Cancer Center.

2. I am the Gary Clayman named as an inventor of the above-captioned application. A portion of my research has been sponsored by Introgen Therapeutics, Inc., the exclusive licensee of this application.

3. In January of 1995, I published a paper (Liu *et al.*, *Cancer Res.* 55:1-6 (1995)) that reported the Ad-p53 infection of cell lines with both mutated and wild-type p53. A similar report was in July of the same year (Clayman *et al.*, *Cancer Res.* 55:3117-3122 (1995)). I understand that the Examiner in charge of examining the referenced application has previously taken the position that these papers teach the use of adeno-p53 in the therapy of tumors *in vivo*, including the therapy of p53-positive tumors (Office Action of 2/17/99).

4. The studies set forth in these papers demonstrate that I had achieved the subject matter that they disclose in the United States at least as of their date of publication, the earliest publication date as between the two being January, 1995).

5. I understand that the papers of Katayose *et al.*, *Clin. Cancer Res.* 1:889-897 (1995) and Srivastava *et al.*, *Urology* 46:843-848 (1995), both published after January, 1995, are being cited against various claims of the present application for their alleged teaching of *in vitro* studies using a p53-expressing adenovirus to infect tumor cells. Based on the earlier publication of my two articles referenced above, it is clear that I had in my possession at least equivalent, and indeed more extensive, data than is taught in the Katayose and Srivastava references at a time prior to their respective publication dates.

6. I declare that all statements made herein of my own knowledge are true, and that all statements of my own belief are believed to be true, and further that these statements were made with the knowledge that willful false statements are punishable by fine or imprisonment, or both, under § 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of this patent, and any reexamination certificate issuing thereon.

11/8/99

Date

  
Dr. Gary Clayman